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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 BRENDA PALMER; JOHN PALMER)
10 MARVIN POPE; BRYAN WISNER;) Case No. 2:15-cv-00769-LDG-VCF
11 JAMES C. MALCOLM; and DANIEL)
11 WATANABE; individuals,) **MOTION TO EXTEND**
12 Plaintiffs,) **DISPOSITIVE MOTION**
12 vs.) **DEADLINE**
13) **(First Request)**
13)
14)
14 DELTA AIRLINES, INC. a domestic)
15 corporation; DOES I through X,)
16 inclusive; ROE CORPORATIONS I)
17 through X, inclusive;)
17)
18 Defendants.)
18)
19)

20 Defendant, Delta Air Lines, Inc. ("Delta"), hereby moves this Court for an order
21 extending the dispositive motion deadline until 30 days after both of the following
22 events have occurred: (1) the Court has ruled on Delta's Motion to Enforce Settlement
23 Agreement (ECF No. 57) (the "Motion to Enforce") and (2) if the Court denies the
24 Motion to Enforce, a ruling has been made on Delta's Motion to Dismiss Second
25 Amended Complaint (ECF No. 40) (the "Motion to Dismiss"). This is the first
26 requested extension of this deadline.

27 This Motion is made and based on the pleadings and papers on file herein,
28 together with the following Memorandum of Points and Authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES

The present dispositive motion deadline in this case is October 5, 2016. On May 25, 2016, Delta filed its Motion to Dismiss, which if granted, would dispose of most, but not all, of the Plaintiffs' claims.

Delta contends that it reached a settlement of this case on September 1, but last week, learned that one or more of the Plaintiffs have reneged on the agreement to settle. Consequently, Delta filed the Motion to Enforce on September 21.

8 Delta should not have to bear the cost of preparing dispositive motions as to five
9 Plaintiffs, only to have the Court eventually find that the parties have an enforceable
10 settlement agreement, making the motions moot. Even if the Court were to ultimately
11 deny the Motion to Enforce, it would be more efficient to delay the filing of dispositive
12 motions until after the Court has ruled on the Motion to Dismiss.

13 For example, Delta has moved to dismiss the ADA claims of Plaintiff, James
14 Malcolm, based on his failure to state plausible claims for relief under the standards set
15 forth in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corporation v.*
16 *Twombly*, 550 U.S. 544 (2007). Even if the Court were to find that these claims are not
17 subject to dismissal under Fed. R. Civ. P. 12(b)(6), Delta believes there are undisputed
18 facts which would entitle Delta to summary judgment on these claims as a matter of
19 law. However, Delta should not be required to undertake the expense of moving for
20 summary judgment on claims which may end up being dismissed by the Court pursuant
21 to the Motion to Dismiss. Delta believes it would be more economical for all concerned
22 if, to the extent necessary, summary judgment motions are filed only with respect to
23 claims which are still pending after the Motion to Dismiss has been decided.

24 The foregoing constitutes good cause pursuant to LR IA 6-1(a) to extend the
25 dispositive motion deadline. There is also excusable neglect under the foregoing rule
26 for Delta's failure to bring this Motion within 21 days of the current dispositive motion
27 deadline per LR 26-4, as Delta did not realize until last week that at least one of the

1 Plaintiffs was contesting the existence of a settlement agreement and that there is a
2 possibility of the case continuing into the dispositive motion phase.

3 Respectfully submitted,

4 FISHER & PHILLIPS LLP

5
6 /s/ Scott M. Mahoney, Esq.
7 SCOTT M. MAHONEY, ESQ.
8 300 South Fourth Street
9 Suite 1500
10 Las Vegas, Nevada 89101
11 Attorneys for Defendant.
12 Delta Air Lines, Inc.

13 **CERTIFICATE OF ELECTRONIC SERVICE**

14 This is to certify that on the 21st day of September 2016, the undersigned, an
15 employee of Fisher & Phillips LLP, electronically filed the foregoing Motion to Extend
16 Dispositive Motion Deadline with the U.S. District Court, and a copy was electronically
17 transmitted from the court to the e-mail address on file for:

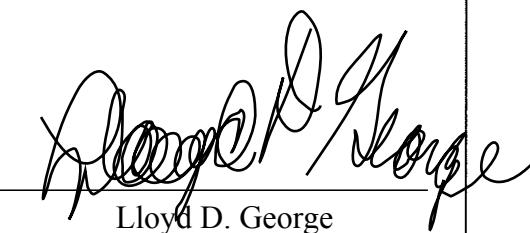
18 Trevor J. Hatfield, Esq.
19 Hatfield & Associates, Ltd.
20 703 South Eighth Street
21 Las Vegas, NV 89101

22 By: /s/ Lorraine James-Newman
23 An employee of Fisher & Phillips LLP

24 **ORDER**

25 IT IS SO ORDERED.
26

27 DATED this 21 day of September, 2016.

28 
Lloyd D. George
Sr. U.S. District Judge